



Comptroller General
of the United States

23245

Washington, D.C. 20548

Decision

Matter of: D&M General Contracting, Inc.

File: B-259785

Date: April 24, 1995

Joel S. Rubinstein, Esq., Bell, Boyd & Lloyd, for the protester,
John T. Longino, Esq., for US Environmental & Industrial, Inc., an interested party,
Cynthia S. Guill, Esq., and Cynthia E. Segal, Esq., Department of the Navy, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly awarded a contract on the basis of initial proposals where solicitation indicated agency's intention to do so, and evaluation and price/technical tradeoff were proper.

DECISION

D&M General Contracting, Inc. protests the award of a contract to US Environmental & Industrial, Inc. (USE&I) under Department of the Navy request for proposals (RFP) No. N62474-93-R-7900, issued as a small disadvantaged business set-aside for the construction, alteration, and repair of government facilities for Naval installations at Point Mugu, California. The protester argues that award to USE&I on the basis of initial proposals was unreasonable.

We deny the protest.

The RFP contemplated the award of an indefinite quantity contract for a base year with 4 option years. Award was to be made to the responsible offeror whose offer conformed to the RFP and was most advantageous to the government under three equally weighted technical factors and price, with price being approximately equal in weight to the technical factors. Price was to be evaluated for realism, to assure that it was neither excessive nor insufficient for the effort. The RFP also incorporated Federal Acquisition Regulation (FAR) § 52.215-16, Alternate III, which states that the government intends to evaluate proposals and make

award without conducting discussions unless the contracting officer determines that discussions are necessary; in light of the Navy's stated intent, the RFP warned that initial proposals should contain the offeror's most favorable terms.

Fifteen proposals were received by the closing date. Although the Navy found that D&M's technical proposal was acceptable (it was rated eighth technically), it was also found to contain numerous significant weaknesses. The Navy also determined that D&M's proposed total price of \$24,600,000, which was third lowest, was unrealistically low, as it deviated significantly from the highest-rated offerors' prices and the government estimate of \$29,475,000. In contrast, the Navy rated USE&I's technical proposal "very good" (it was rated third technically), because it did not contain any significant weaknesses and contained numerous strengths. In addition, the Navy determined that USE&I's evaluated price of \$27,875,000, the fifth lowest, was the lowest of any offeror whose proposal did not contain deficiencies or significant weaknesses, and compared favorably to the government estimate. The Navy thus determined that USE&I's proposal was the most advantageous to the government and made award to the firm without discussions.

D&M argues that the Navy's determination that discussions were unnecessary was unreasonable and an abuse of discretion given that USE&I's technical and price proposals contained numerous weaknesses--many more than D&M's proposal which, it maintains, contained only minor weaknesses and omissions--and that USE&I's price was approximately \$3 million higher than D&M's. D&M concludes that, had the Navy given D&M the opportunity to participate in discussions, it would have been able to improve its proposal sufficiently to move into line for award.

Where, as here, an RFP incorporates the provisions of FAR § 52.216-16, Alternate III, advising offerors of a Department of Defense contracting agency's intent to make award on the basis of initial proposals without conducting discussions, the agency may properly do so, even to an offeror which did not propose the lowest price (like USE&I), provided that the contracting officer determines that

discussions are unnecessary.¹ FAR § 15.610(a)(4); see Information Spectrum, Inc., B-256609.3; B-256609.5, Sept. 1, 1994, 94-2 CPD ¶ 251. While the contracting officer has discretion to decide whether or not to hold discussions, we will review the exercise of that discretion to ensure that it is reasonably based on the particular circumstances of the procurement. TRI-COR Indus., Inc., B-252366.3, Aug. 25, 1993, 93-2 CPD ¶ 137.

We see nothing improper with the award to USE&I based on the initial proposal under the circumstances. D&M does not challenge any specific aspect of the evaluation; rather, D&M only generally argues that the weaknesses in its proposal were minor. The record shows, however, that the Navy viewed D&M's technical proposal as containing significant weaknesses. The Navy found, for example, that D&M's proposal failed to address procedures for purchasing long lead-time items; did not include resumes for all key management and technical staff proposed for the contract; did not address delivery order procedures; and did not set forth a contract administration plan with detailed procedures for ensuring timely contract performance, as required by the RFP. In contrast, the Navy found that USE&I's proposal provided on-site organization with delineated lines of authority, responsibility, and control, as required; its purchasing system included accounting, schedule, and tracking controls; its proposed key management and staff exceeded the requirements in the solicitation; and its contract administration plan demonstrated an exceptional understanding of the administrative requirements of the delivery order process. Since the protester does not challenge any of the agency's evaluation conclusions as improper, there is no basis for questioning the agency's determination that the awardee's proposal was technically superior to the protester's.

Although D&M generally alluded to the propriety of the price/technical tradeoff in its protest submission, it was provided the Navy's tradeoff analysis and justification for award with the agency's administrative report, and has not challenged any of the findings or conclusions set forth in it. D&M's price advantage was found to be offset by: (1) USE&I's "acceptable" or "very good" ratings for all factors and subfactors; (2) the comparative weakness of D&M's technical proposal; and (3) the fact that D&M's price

¹For Department of Defense, U.S. Coast Guard, and National Aeronautics and Space Administration procurements, a former requirement that an award on the basis of initial proposals result in the lowest overall cost to the government was eliminated in 1990 by Public Law 101-510. See 10 U.S.C. § 2305(b)(4)(A) (Supp. V 1993); FAR § 15.610(a)(3).

was considered unreasonably low. Since D&M has not specifically challenged the agency's analysis or conclusion supporting the tradeoff, and there is no basis in the record for questioning it, the agency properly determined that the awardee's proposal was the most advantageous to the government.

As indicated above, FAR § 52.215-16 permits the Navy to decide in advance to make award without discussions, even to other than the low-priced offeror, so long as this intention is announced in the solicitation. FAR § 15.610(a)(4).² Here, the solicitation contained the requisite notice, and since there is no basis for questioning the evaluation or tradeoff (we also note that D&M does not even attempt to explain how its responses to discussions could have improved its proposal), the agency properly made award based on initial proposals.

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel

²Indeed, the regulation provides that, once the intention to make award without discussions is announced, the rationale for any subsequent reversal of that decision must be documented in the contract file.